

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

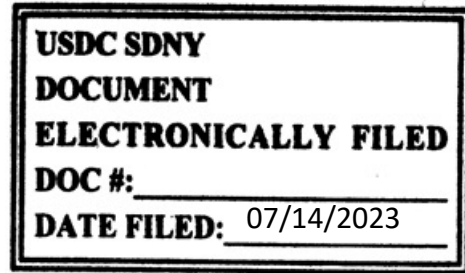
Randel Smickle,

Petitioner,

-against-

Superintendent, Shawangunk Correctional
Facility,

Respondent.



23-CV-01634 (JHR) (SDA)

ORDER

STEWART D. AARON, United States Magistrate Judge:

WHEREAS, the Court has before it an unopposed request by *pro se* Petitioner Randel Smickle (“Petitioner”) to stay this action pending resolution of his Criminal Procedure Law (“CPL”) § 440.10 motion (*see* Am. Pet., ECF No. 8, at PDF p. 7; Resp.’s Interim Response, ECF No. 17); and

WHEREAS, by Order, dated June 29, 2023, the Court directed Petitioner to file a letter setting forth good cause for his failure to exhaust his as-yet unexhausted ineffective assistance of counsel claim in state court prior to filing the Petition 6/29/23 Order, ECF 18); and

WHEREAS, on July 14, 2023, the required letter from Petitioner was filed (Smickle Ltr., ECF No. 19); and

WHEREAS, the Court finds that Petitioner’s reasons for filing the Petition prior to exhausting his ineffective assistance of counsel claim constitutes good cause under the second *Rhines* factor, due to his reasonable confusion as to the proper procedure, *see Whitley v. Ercole*, 509 F. Supp. 2d 410, 419 (S.D.N.Y. 2007).

NOW, THEREFORE, IT IS HEREBY ORDERED, AS FOLLOWS:

1. This action is stayed while Petitioner exhausts his ineffective assistance of counsel claim.
2. Petitioner shall update the Court when he receives a decision on his pending CPL § 440.10 motion and, in the event that the motion is denied, shall again update the Court once he has received a decision on any application for leave to appeal.
3. No later than December 31, 2023, Respondent shall file a letter updating the Court as to the status of Petitioner's CPL § 440.10 motion.

SO ORDERED.

Dated: New York, New York
July 14, 2023

A handwritten signature in black ink, appearing to read "Stewart D. Aaron", is written over a horizontal line.

STEWART D. AARON
United States Magistrate Judge